

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARROW ELECTRONICS, INC.,

Plaintiff,

v.

ELITISE, LLC,

Defendant.

COMPLAINT

Civil Action No. _____

Plaintiff Arrow Electronics, Inc. (“Arrow”) alleges the following for its Complaint against Elitise, LLC (“Elitise”):

NATURE OF THE ACTION

1. Arrow and Elitise entered into a contract titled the Secured Promissory Note (“Note,” attached as Exhibit 1). Elitise failed to perform under the Note. Arrow and Elitise subsequently entered into a Forbearance Agreement (“Agreement” or “Agmt.,” attached as Exhibit 2), which provided for monthly payments by Elitise to Arrow on its outstanding debt in exchange for Arrow’s agreement to forbear from exercising its default remedies under the Note. Elitise made the first payment, but failed to make any subsequent payments. As such, Elitise is in default and Arrow brings this action pursuant to the Note and the Forbearance Agreement to recover its damages, fees, and costs.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Arrow Electronics, Inc. is a New York corporation with its principal place of business at 9201 East Dry Creek Road in Englewood, Colorado.

3. Arrow is a global provider of electronics products, services, and solutions for industrial and commercial users.

4. Defendant Elitise, LLC is an Arizona limited liability company.

5. On information and belief, Elitise's only member is Indurapower, Inc. On information and belief, Indurapower, Inc. is a Delaware corporation with its principal place of business in Arizona.

6. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332(a). Complete diversity exists between Plaintiff and Defendant, and the amount-in-controversy exceeds \$75,000.00, excluding interest and costs.

7. Jurisdiction and venue are proper in this Court because both parties consented to exclusive jurisdiction in New York. (Note ¶ 14(f).)

GENERAL ALLEGATIONS

8. On August 19, 2016, the Parties executed the Note, in which Arrow agreed to provide an advance of cash to Elitise to fund Elitise's payables from purchase orders. (Note ¶ 1.) In exchange, Elitise agreed to pay back the advance, plus interest, and to provide a UCC security interest to Arrow. (*Id.* ¶¶ 1-2.) Elitise's promise to pay was secured by UCC collateral. (*Id.* ¶ 10.)

9. The Note provided Arrow with a first priority security interest in Elitise's UCC property. (*Id.* ¶ 10(a).)

10. The Note is governed by New York law, and Elitise consented to exclusive jurisdiction in New York for any action arising out of the Note or any transaction contemplated by it. (*Id.* ¶ 14(e), (f).) Elitise also agreed to pay Arrow's attorneys' fees in the event of any proceeding to enforce the Note's obligations. (*Id.* ¶ 10(b)(iii).)

11. Elitise accepted funds provided by Arrow pursuant to the Note, but then breached the Note by incurring indebtedness in violation of the Note, failing to make payments on account, and failing to make timely and regular payments of interest and principal. (Agmt. ¶ C.)

12. On September 11, 2019, the Parties entered into the Agreement to resolve Elitise's default under the Note and forbear legal action thereon.

13. The Agreement provided that Elitise would make a one-time \$25,000.00 payment as a condition precedent to the Agreement taking effect. (*Id.* ¶ 6.) Elitise would then make five monthly payments to Arrow of \$25,000.00 each. (*Id.* ¶ 5.) Thereafter, all remaining and unpaid obligations would be paid in full in cash on or before February 28, 2020. (*Id.*)

14. In exchange, Arrow agreed to forbear from exercising its default remedies under the Note unless Elitise breached its obligations under the Agreement or the Note. (*Id.* ¶ 4.)

15. The Agreement provided that the Note remained in full force and effect. (*Id.* ¶ 9.)

16. At the time of the Agreement, Elitise's obligations were as follows:

\$555,000.00	Principal
\$46,250.00	Interest on the Loan (through August 31, 2019)
\$186,318.94	Accounts Receivable
\$ 23,289.87	Interest on the Accounts Receivable Balance (through August 31, 2019)
\$2,850.00	Attorney's fees
<u>\$813,708.81</u>	<u>Total owed plus costs</u>

(*Id.* ¶ D.)

17. The Parties agreed that all Elitise's liabilities and obligations arising out of the Note were capitalized and treated as outstanding principal under the loan as of September 11, 2019. (*Id.* ¶ 3.)

18. The Agreement provided that interest on Elitise's obligations would accrue during the forbearance period at the rate of 8.5% per annum, but that in the event of default, interest would begin to accrue at the default rate of 12.5% per annum. (*Id.* ¶ 4.)

19. Elitise released and discharged Arrow from any and all claims related to the Parties' relationship. (*Id.* ¶ 11.)

20. The Agreement provided it would be governed and construed in accordance with the laws of the State of New York. (*Id.* ¶ 16.)

21. Both parties waived their right to trial by jury with respect to any litigation arising out of the Agreement. (*Id.* ¶ 23.)

22. On September 12, 2019, Elitise satisfied the \$25,000.00 condition-precedent payment pursuant to paragraph 6 of the Agreement.

23. Elitise failed to make any subsequent payments under the Agreement.

24. On March 23, 2020, Sergei Begliarov, the Chief Executive Officer of Elitise, LLC, sent Arrow a letter concerning an audit of Elitise's financial statements ("Letter," attached as Exhibit 3).

25. In the Letter, Elitise admitted that it owed Arrow \$788,709.00 in principal, plus interest, as of December 31, 2019, although Elitise misstated the applicable interest:

Our auditors, Haskell & White, LLP, are conducting an audit of our financial statements. Please confirm directly to them the following information relating to our note payable to you at December 31, 2019:

Date of Note:	3/31/2016
Original amount of Note:	550,000
Unpaid principal balance including capitalized amounts:	813,709
Maturity date:	2/28/2020
Interest rate:	8.5%
Total interest paid:	0
Balance as of 12/31/2019:	788,709
Collateral:	UCC

Please indicate in the space provided below whether the above is in agreement with your records. If it is not, please furnish our auditors any information you may have that will help them reconcile the difference.

After signing and dating your reply, please send it directly to Haskell & White, LLP, ATTN: German Beas, 9171 Towne Centre Drive, Suite 190, San Diego, CA 92122 in the enclosed return envelope or via email directly to gbeas@hwcpa.com.

Very truly yours,


Sergei Begliarov, CEO
Elitise, LLC

26. Elitise has not made any additional payments under the Agreement since the Letter.

27. Under the Note and the Agreement, Elitise additionally owes Arrow over \$100,000.00 in interest, attorneys' fees, and costs, which continue to accrue under the Agreement and Note.

28. Accordingly, Arrow now brings suit to recover the remaining principal of \$788,708.81 due under the Agreement, plus interest, fees, and costs totaling more than \$100,000.00 to date.

FIRST CLAIM FOR RELIEF
(Breach of the Forbearance Agreement)

29. The preceding allegations are incorporated as though set forth fully herein.

30. Under the Forbearance Agreement, in exchange for Arrow forbearing enforcement of its right to payment, Elitise agreed to pay Arrow a one-time payment of \$25,000.00, five installments of \$25,000.00, and the entire balance owed to Arrow on or before February 28, 2020.

31. Elitise agreed that, if it did not satisfy its obligations under the Forbearance Agreement, Arrow was entitled to collect from it the \$813,708.81, less any payments tendered by Elitise.

32. Elitise also agreed that Arrow was entitled to interest on the unpaid principal at a rate of 8.5% per annum, and, in the event of default, in the amount of 12.5% per annum.

33. Consistent with its obligations under the Forbearance Agreement, Arrow forbore from enforcing its rights against Elitise, but Elitise failed to make payments as required by the Agreement.

34. Elitise owes Arrow \$788,708.81 in principal pursuant to the Agreement.

35. Under the Agreement, Arrow also is entitled to interest at the default rate of 12.5%. Under the Note, which was incorporated by the Agreement, Arrow is entitled to collect from Elitise its reasonable attorneys' fees and court costs in enforcing Elitise's obligations. To date, interest, costs, and fees exceed \$100,000.00.

36. Based on the foregoing, Arrow has already suffered damages of roughly \$900,000.00, and will suffer further damages in the form of accruing contractual interest and additional attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
(In the Alternative to Claim One, Account Stated)

37. The preceding allegations are incorporated as though set forth fully herein.

38. Elitise obtained from Arrow \$555,000.00 worth of advances under the Note; incurred further obligations of \$186,318.94 for products delivered but not yet paid for; accrued \$69,539.87 in interest; and caused Arrow to incur \$2,850.00 in fees—in total, \$813,708.81.

39. Arrow stated this account to Elitise in the Agreement and noted that the full amount would be capitalized, with further interest accruing thereon.

40. Elitise agreed to the statement of its account and made partial payment of \$25,000.00 on its outstanding balance and represented that additional payments were forthcoming.

41. Elitise later ratified Arrow's statement of the principal amount due when it affirmatively sent Arrow a letter in connection with a financial audit admitting that it owed Arrow \$788,709.00 (i.e., the original capitalized amount of \$813,708.81 less Elitise's partial payment), plus further accrued interest.

42. To date, Elitise still has not paid the stated amount of its account with Arrow, even after acknowledging the account's validity and that the account is past due.

43. By accepting Arrow's account summaries and affirming their validity, Elitise assented to Arrow's statement of the account between the parties and thereby agreed that the stated balance was due and owing.

44. Accordingly, Arrow seeks to enforce the outstanding stated account of \$788,709.00, plus applicable interest, fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Arrow Electronics, Inc., respectfully requests that the Court enter judgment in its favor and against Defendant Elitise, LLC and grant relief as follows:

- a. On its First Claim for Relief, awarding damages in favor of Arrow against Elitise in excess of \$788,708.81, plus accrued interest, fees, and costs.

- b. In the alternative, on its Second Claim for Relief, awarding damages in favor of Arrow against Elitise in excess of \$788,709.00, plus interest, fees, and costs.
- c. Such other and further relief as the Court deems just and proper.

Dated: December 1, 2020

Respectfully submitted,

s/ Paul D. Swanson

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